

BEFORE THE DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF

Case No. 3610

TECUMSEH POULTRY, LLC
FID: 73411

CONSENT ORDER

Respondent.

I. INTRODUCTION

1. The Nebraska Department of Environment and Energy (“Department”) and Tecumseh Poultry, LLC (“Respondent”), voluntarily enter into this Consent Order. The Consent Order establishes a Compliance Schedule for Respondent to comply with the Nebraska Environmental Protection Act (“NEPA”), NEB. REV. STAT. §§ 81-1501 to 81-1532, and Title 129 of the Nebraska Administrative Code – *Air Quality Regulations*.

2. The Department and Respondent agree that settlement of this matter is in the public interest to ensure compliance with state laws, rules, and regulations, adopted and issued to protect the environment.

II. JURISDICTION

3. The Department is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1), of exercising exclusive general supervision, administration, and enforcement of the NEPA and Title 129.



4. The Department is further charged with the duty to act as the state air pollution control agency for all purposes of the Clean Air Act, as amended, 42 U.S.C. § *et seq.* NEB. REV. STAT. § 81-1504(4).

5. In signing this Consent Order, Respondent agrees to undertake all actions required by this Consent Order. Respondent agrees not to contest the jurisdictional allegations referenced herein in any action to enforce this Consent Order. Respondent waives its rights to further hearing as provided in Neb. Rev. Stat. § 81-1507 and the Administrative Procedure Act, NEB. REV. STAT. § 84-901 *et seq.*

III. PARTIES

6. The parties to this Consent Order are the Department and Respondent, Tecumseh Poultry, LLC, a Nebraska Limited Liability Company. This Consent Order is binding on the Department, Respondent, and any successors and assigns of the parties. Respondent does not make any admission with respect to any factual allegation contained in this Consent Order or to any liability to any third party.

IV. FINDINGS OF FACT

7. Respondent is engaged in the production of poultry and operates a facility (identified by Respondent as “MBA Broilers”)—located at 61968 Highway 41, Tecumseh, NE 68450—used for that purpose.

8. On or about January 11, 2010, the Department issued to Respondent Air Quality Construction Permit Number CP09-006 (“Construction Permit”), which authorized Respondent

to construct an “incinerator,” as defined in 129 NAC 1-002.50, in which animal carcasses are burned to ash. *See* Construction Permit, § III(A)(3)(a).

9. The installed incinerator is an “emissions unit” (“Emissions Unit 1” or “EU-1”), as defined in 129 NAC 1-002.37.

10. In or about November 2022, the Department issued to Respondent Air Quality Class II General Operating Permit Number GOP-INCIN-2022 (“Operating Permit”).

11. Pursuant to § II(I) of the Operating Permit, all applicable requirements contained in the Construction Permit are incorporated into the Operating Permit.

12. The NEPA outlaws violating any term or condition of an air pollution permit. NEB. REV. STAT. § 81-1506(4)(b).

13. The NEPA further prohibits violating any rule or regulation adopted and promulgated pursuant to the NEPA. NEB. REV. STAT. § 81-1508.02(1)(b).

14. On or about April 18, 2023, Respondent submitted a letter dated April 14, 2023 (“April 14 Letter”), to the Department disclosing that, with respect to Emissions Unit 1, “large sections of refractory were missing; there were gaps and holes around the lid; the seams and lids would not shut; and door gaskets were missing.”

15. In the April 14 Letter Respondent further stated:

The concerns with Avian Influenza and the possible spread by scavenging animals and transportation of chicken carcass off site carried too high a risk. Therefore, Management determined that continuing to operate incinerator EU-1 . . . in [its] current condition was the best course of action for the business to avoid a possible outbreak of Avian Influenza within the farms and face the risk of a mass culling of the flock.

16. Finally, Respondent stated that it intended to “purchase a rebuild kit to repair the refractory in EU-1,” in the April 14, 2023, Letter.

FIRST CAUSE OF ACTION

17. From on or about March 8, 2023, to on or about the date of the execution of this Consent Order, Respondent violated a rule or regulation adopted and promulgated pursuant to the NEPA, to wit, 129 NAC 14-006, by operating an incinerator that did not consist of an adequate refractory lined combustion furnace, all in violation of Neb. Rev. Stat. § 81-1508.02(1)(b).

SECOND CAUSE OF ACTION

18. From on or about March 8, 2023, to on or about the date of the execution of this Consent Order, Respondent violated a condition of an air pollution control permit, to wit, § I(H)(2)(a)–(c) of the Operating Permit, by failing to properly maintain Emissions Unit 1 in a manner that minimized the amount of uncontrolled pollutants that were released to the atmosphere, to wit, failing to (1) repair the gaps and holes around the lid, (2) repair or replace the non-closing lid, (3) repair the seams that would not shut, and (4) replace the missing gaskets, all in violation of Neb. Rev. Stat. § 81-1506(4)(b).

V. COMPLIANCE SCHEDULE

19. Respondent agrees to:

- a. Within 30 days of the execution of this Consent Order:
 - i. Purchase all equipment necessary to repair the refractory in Emissions Unit 1 (“necessary repair equipment”), unless such purchase has already been made, and
 - ii. Submit to the Department:

- A. A copy of each invoice that documents the purchase of the necessary repair equipment,
 - B. Information related to the date on which the necessary repair equipment is expected to be delivered to Respondent, and
 - C. Any tracking number(s) associated with the shipment or delivery of the necessary repair equipment;
 - b. Notify the Department that the necessary repair equipment has been delivered within two business days of receipt;
 - c. Within 60 days of delivery of the necessary repair equipment:
 - i. Complete the repairs to Emissions Unit 1, and
 - ii. Submit to the Department:
 - A. Photographic evidence documenting the completion of the repairs, and
 - B. A certification, signed by the Responsible Official, stating that the repairs to Emissions Unit 1 are complete and that Emissions Unit 1 is operating in compliance with the Operating Permit;
 - d. Send all submissions and notifications required in ¶¶ 19(a)(ii), 19(b), and 19(c)(ii) of this Consent Order:
 - i. Via postal mail to: Brad Pracheil, Administrator, Inspection and Compliance Division, Nebraska Department of Environment and Energy, P.O. Box 98922, Lincoln, NE 68509-98922, or
 - ii. Via electronic mail to: brad.pracheil@nebraska.gov; and

- e. Notwithstanding any other deadline imposed in ¶ 19 of this Consent Order, achieve full compliance with the provisions of this Compliance Schedule no later than 180 days after the execution of this Consent Order.

VI. SATISFACTION AND COMPLIANCE WITH OTHER LAWS

20. Respondent agrees to perform all actions required by this Consent Order in accordance with all applicable local, state, and federal laws, regulations and permits.

VII. RESERVATION OF RIGHTS

21. Nothing in this Consent Order shall be construed to limit the power and authority of the NDEE to take or order any action necessary to protect public health, welfare, or the environment or to enforce any provision of NEPA, Title 129, and any rules, regulations, orders, or permits issued pursuant to NEPA; including recovery of civil penalties for violations of NEPA, Title 129, as provided under Neb. Rev. Stat. § 81-1508.02.

VIII. NEGATION OF AGENCY RELATIONSHIP

22. Nothing contained in this Consent Order shall be construed to create, either expressly or by implication, the relationship of agency between the Department and the Respondent.

IX. AMENDMENTS

23. This Consent Order may be amended upon the mutual written agreement of the Department and the Respondent.

X. EFFECTIVE DATE

24. This Consent Order shall become effective on the date it is signed by the Director of the Department or the Director's designee.

XI. TERMINATION

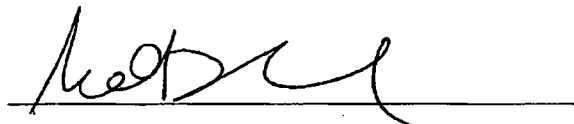
25. Upon completion of the Compliance Schedule, this Consent Order shall terminate upon order of the Department. Such order shall be issued within 90 days of the Department determining that the terms of the Compliance Schedule have been met.

XII. SEVERABILITY

26. If any provision or authority of this Consent Order or the application of this Consent Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Consent Order shall remain in force and shall not be affected thereby.

XIII. SIGNATURES

27. For Respondent Tecumseh Poultry, LLC:



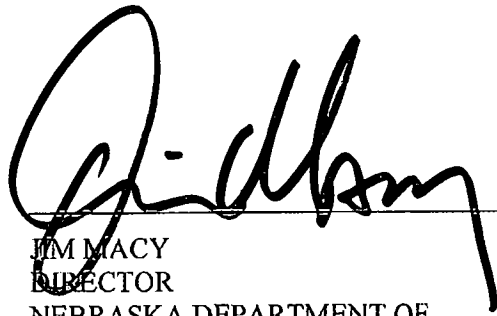
SCOTT PAVEL
SENIOR VICE PRESIDENT
TECUMSEH POULTRY, LLC

Date: 6/28/2023

28. For the Department:

IT IS SO ORDERED and agreed this 3rd day of July, 2023.

FID: 73411
Consent Order
Case No. 3610

A large, stylized handwritten signature in black ink, appearing to read "Jim Macy", is written over a horizontal line.

JIM MACY
DIRECTOR
NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY